

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Application of)	No. PLN 51711A SUB/SPR
)	
Charles Wenzlau, Wenzlau Architects,)	Ravenwood PP and SPR
on behalf of Kelly Samson)	
)	
For Approval of a Preliminary Plat and)	FINDINGS, CONCLUSIONS,
<u>Site Plan and Design Review</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat, and for site plan and design review approval, to divide an approximately 0.18-acre parcel into five lots for five townhome units within four buildings at 167 Wyatt Way NE, are **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing:

The City of Bainbridge Island Hearing Examiner commenced an open record hearing on the proposal on June 30, 2022, using remote access technology. At the outset of the hearing, however, the Hearing Examiner granted the Applicant’s request to postpone the hearing to allow the Applicant time to address a new condition recommended by the City of Bainbridge Island, in its staff report, related to installation of a public trail through the property. The Hearing Examiner announced that the matter would be continued on August 1, 2022. The Hearing Examiner thereafter continued the open record hearing on August 1, 2022, using remote access technology.

Testimony:

The following individuals provided statements on June 30, 2022:

Kelly Tayara, City Senior Planner
Paul Nylund, City Development Engineering Manager

Attorney Bruce Weiland represented the Applicant on June 30, 2022.

The following individuals testified under oath at the open record hearing on August 1, 2022:

Kelly Tayara, City Senior Planner
Paul Nylund, City Development Engineering Manager
Charles Wenzlau, Applicant Representative
Kelly Samson, Applicant

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Adam Wheeler, Project Civil Engineer

Exhibits:

The following exhibits were admitted into the record:

1. Staff Reports:
 - A. Staff Report, dated June 17, 2022
 - B. Revised Staff Report, dated July 18, 2022
2. Land Use Application, dated November 8, 2021
3. Owner/Agent Agreement, dated August 15, 2021
4. Notice of Incomplete Application, dated February 3, 2022
5. Notice of Complete Application, dated March 2, 2022
6. Notice of Application, dated March 11, 2022
 - A. Affidavit of Public Notice, dated June 17, 2022
 - B. Certificate of Posting, dated March 11, 2022
7. Notification to Extend Decision Timeline, dated March 23, 2022
8. SEPA Environmental Checklist, dated February 3, 2022
9. Architectural Plan Set (11 Sheets), dated December 1, 2021, and January 15 and 18, 2022
10. Lot 5 Lars Lone's Park Addition to Winslow Base Map, dated August 5, 2021
11. Civil Plan Set (2 Sheets), dated November 19, 2021
12. Preliminary Plat Plan Set (6 Sheets), dated November 30, 2021
13. Arborist Report, Katy Bigelow, dated November 12, 2021
14. Civil Engineer Report, Browne Wheeler Engineers, Inc., dated August 18, 2021
15. Easement Agreement (No. 3249230), dated April 18, 2000
16. City of Bainbridge Island Water and Sewer Availability Letter, dated March 2, 2022
17. Lot Closures, dated November 30, 2021
18. Title Subdivision Guarantee (No. SGW-08005192), dated November 1, 2021
19. Applicant Zoning Summary, dated November 8, 2021
20. Project Narrative, dated November 8, 2021
21. Design for Bainbridge Worksheet, with Design Review Board approval, dated February 8, 2022.
22. Comment from Bainbridge Island Fire District, dated April 4, 2022
23. Comment from Kitsap Public Health District, dated June 10, 2022
24. Memorandum from Department of Public Works – Engineering, dated April 26, 2022
25. Planning Commission Draft Meeting Minutes and Recommended, dated May 26, 2022
26. Comment from Winston Albert, dated March 24, 2022
27. SEPA Determination of Nonsignificance, issued May 27, 2022
 - A. Affidavit of Publication, dated May 2021
 - B. Affidavit of Public Notice, dated June 16, 2022
28. Notice of Public Hearing, undated
 - A. Affidavit of Public Notice, dated June 17, 2022
 - B. Certificate of Posting, dated June 10, 2022

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29. Applicant Email Requesting Continuance, dated June 29, 2022; Applicant Email Requesting Reconsideration of Public Access Condition, dated June 29, 2022.
30. Revised Memorandum from Department of Public Works – Engineering, dated July 18, 2022
31. Memorandum from Kelly Tayara to Hearing Examiner re: Revised Staff Report, dated July 18, 2022
32. Comment from Becca Hanson, dated July 26, 2022

The Hearing Examiner enters the following findings and conclusions based upon the testimony at the open record hearing and admitted exhibits:

FINDINGS

Application and Notice

1. Charles Wenzlau, Wenzlau Architects, on behalf of Kelly Samson (Applicant), requests preliminary plat approval to divide an approximately 0.18-acre parcel into five lots for five townhome units within four buildings. Because two of the townhome units would be attached, site plan and design review approval are also required for the proposed development. The proposed project would include the preservation of 469 square feet of natural areas containing two existing significant trees; 1,017 square feet of community space containing common garden elements; stormwater management features, shared garages providing six off-street parking spaces; and frontage improvements to Wyatt Way NE that would include a public sidewalk, curb, and gutter. The property is located at 167 Wyatt Way NE.¹ *Exhibit 1.B, Revised Staff Report, pages 1, 2, and 9 through 13; Exhibit 2; Exhibits 9 through 15; Exhibits 17 through 21; Exhibit 24; Exhibit 25; Exhibit 30; Exhibit 31.*
2. The City of Bainbridge Island (City) determined that the application was complete on March 2, 2022. On March 10, 2022, the City mailed notice of the application to property owners within 500 feet of the subject property, with a comment deadline of March 25, 2022. The next day, the City emailed notice of the application to reviewing agencies and posted notice on the City’s website. The Applicant posted notice of the application on-site the same day. On June 9, 2022, the City provided notice of the open record associated with the application by mailing notice to property owners within 500 feet of the subject property and by posting notice at City kiosks. The next day, the City posted notice of the hearing on the City website. The Applicant posted notice of the hearing on-site the same day. City Senior Planner Kelly Tayara testified at the continued August 1, 2022, hearing that, following the Hearing Examiner’s grant of the Applicant’s request to continue the scheduled hearing on June 30, 2022, the City updated its notice materials on

¹ The property is identified as Tax Assessor Parcel No. 4110-000-005-0004. *Exhibit 1.B, Revised Staff Report, page 2.* A legal description of the property is provided with Preliminary Plat Plan Set. *Exhibit 12.*

the City website to reflect the continued hearing date. *Exhibit 1.B, Revised Staff Report, page 1; Exhibit 5; Exhibit 6; Exhibit 28; Exhibit 29; Testimony of Ms. Tayara.*

3. The City received two public comments on the proposal in response to its notice materials. Winston Albert raised concerns about the proposed development and other development projects in the area increasing density within the neighborhood and the downtown Winslow area, creating traffic congestion issues, altering the balance and character of the neighborhood, and generating parking and noise impacts. Becca Hanson, Board Chair of the Madrona Commons Home Owners' Association (MCHOA), expressed opposition to a public trail being located through the MCHOA parking lot, noting that an easement within the lot is for the benefit of a neighboring property to the north and not for the general public, that creating a public trail in this location would be dangerous for pedestrians, and that inviting the public through the MCHOA parking area could create safety issues for users of the lot. *Exhibit 1.B, Revised Staff Report, page 3; Exhibit 26; Exhibit 32.*
4. The City also received comments on the proposal from reviewing departments and agencies in response to its notice materials. The Kitsap Public Health District noted that it reviewed the application and had no concerns about the proposal. City Development Engineering Manager Paul Nylund provided a memorandum, dated April 26, 2022, that provided recommended conditions of approval, which have been incorporated into the conditions of approval recommended by City staff. Mr. Nylund provided a revised memorandum, dated July 18, 2022, which—as discussed in further detail later in this decision—noted that the inclusion of a public trail through the subject property would not be recommended or required by the City because it would result in an overall increase in risk to public safety. The Fire Marshal recommended approval of the proposal subject to four conditions, which have been incorporated into the conditions of approval recommended by City staff. *Exhibit 1.B, Revised Staff Report, pages 3, 4, and 18 through 20; Exhibits 22 through 24; Exhibit 30; Exhibit 31.*

State Environmental Policy Act

5. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City consolidated notice of the application and SEPA review comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a SEPA comment deadline of March 25, 2022. The City's notice materials stated that the City expected to use a Determination of Nonsignificance (DNS) for the proposal. The City did not receive any comments specific to the environmental review of the proposal. The City reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a DNS on May 27, 2022, with an appeal deadline of June 10, 2022. The

same day, the City published the DNS on the City’s website, emailed the DNS to reviewing departments, agencies, and parties of record, and posted the DNS to the Washington State Department of Ecology’s SEPA Register. The DNS was not appealed. *Exhibit 1.B, Staff Report, page 1; Exhibit 6; Exhibit 8; Exhibit 27.*

Comprehensive Plan and Zoning

6. The property is designated “Mixed Use Town Center - CORE Overlay District” under the City Comprehensive Plan. This district is a “designated center” in the Comprehensive Plan and is within an area commonly referred to as Winslow, which is governed by the Winslow Master Plan. City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:

- Goal LU 5: Focus urban development in designated centers.
- Policy LU 5.1: Winslow is the urban core of the Island while neighborhood centers are smaller-scale mixed-use centers. In order to achieve the goals of the Growth Management Act this Plan:
 - Encourages development in areas where public facilities and services exist or can be provided in an efficient and effective manner
 - Provides a vibrant, pedestrian-oriented core
 - Reduces sprawl
 - Provides choice of housing location and lifestyle
 - Maintains and protects environmentally sensitive and resource lands
 - Encourages the retention of open space
 - Maintains and enhances fish and wildlife habitat
- Policy LU 5.3: Encourage residential uses in a variety of forms and densities as part of the use mix in Winslow and neighborhood centers.
- Policy LU 5.4: Sustainable development and redevelopment will be focused in the designated centers through a combination of intergovernmental and public-private partnerships, affordable housing programs, “green” capital projects and low impact development standards.
- Goal LU-6: Ensure a development pattern that is true to the vision for Bainbridge Island by reducing the conversion of undeveloped land into sprawling development. Encourage improvement of aging or underutilized developments over development of previously undeveloped property.
- Policy LU 6.2: Promote dense residential and commercial development and encourage human activity within Winslow, the heart of Bainbridge Island. In order to create a vibrant City center direct growth where infrastructure exists, reduce reliance on the automobile, provide opportunities for affordable housing and absorb growth that would otherwise be scattered in outlying areas. Plan for adequate parking in

Winslow to accommodate residents and visitors who drive downtown for shopping, participation in local government, attendance at cultural events and centers, and to use other resources in Winslow.

- Goal LU-7: The Winslow mixed use and commercial districts are designed to strengthen the vitality of downtown Winslow as a place for people to live, shop and work. The Winslow Mixed Use Town Center (MUTC) is intended to have a strong residential component to encourage a lively community during the day and at night. The high residential density of Winslow requires the Central Core Overlay District to provide services and products that meet the needs of residents as well as visitors.
- Policy LU 7.1: The Island's major center for new commercial development is the MUTC and the other commercial districts in Winslow. Development within the MUTC and High School Road Districts shall be consistent with the Winslow Master Plan. The level of development is determined using Floor Area Ratio (FAR) rather than dwelling units per acre. The use of FAR may result in an increase in the base level of development (density) over the existing zoning, but will provide greater flexibility in type and size of housing units that will further the goals of this Plan.
- Policy LU 7.3: The Central Core is the most densely developed district within the Mixed Use Town Center. Within this Overlay District, residential uses are encouraged, but exclusive office and/or retail uses are permitted. Mixed-use development within the Central Core Overlay District that includes a residential component may be exempt from requirements to provide off-street parking for the residential component of the project.
- Goal HO-3: Promote and maintain a variety of housing types to meet the needs of present and future Bainbridge Island residents at all economic segments in a way that is compatible with the character of the Island and encourages more socio-economic diversity. Partner with community non-profit organizations and local and regional private and public entities in carrying out the following policies.
- Policy HO 3.1: Encourage innovative zoning regulations that increase the variety of housing types and choices suitable to a range of household sizes and incomes in a way that is compatible with the character of existing neighborhoods. Examples of innovative approaches are cottage housing development, conservation villages, stacked or common-wall housing, tiny houses and accessory dwelling units.
- Policy HO 3.4: Partner with non-profit housing organizations, churches, the development community, local lending institutions, elected officials and the community at large to assist in meeting affordable housing goals and implementing strategies.

- Policy HO 3.5: Support the efforts of community non-profit housing organizations and local and regional public and private entities in developing and managing affordable housing on Bainbridge Island.
- Goal TR-2: Provide a non-motorized transportation system that is a planned and coordinated network of shoulders, sidewalks, trails, footpaths, bikeways and multi-purpose trails that connect neighborhoods with parks, schools, the shoreline, the ferry terminal and commercial areas.

City staff also identified the following goals and policies of the Winslow Master Plan as relevant to the proposal:

- Goal WMP 2-1: Strengthen Winslow—the Island’s commercial, cultural and commuter hub—as a sustainable, affordable, diverse, livable and economically vital community, by:
 - Creating a pedestrian environment
 - Providing pedestrian facilities and amenities;
 - Creating a streetscape that provides pedestrian amenities;
 - Providing pedestrian connections to Eagle Harbor, the Ravine and Ferry Terminal and between neighborhoods;
 - Preserving, expanding and promoting the existing network of social/informal trails;
 - Recognizing and developing Winslow Way as the centerpiece of downtown Winslow; and
 - Managing public parking and encouraging a “park-once district” that provides accessible parking for downtown users.
 - Creating a carefully designed grid of multi-modal street connections for improved access and circulation by
 - Improving street connectivity;
 - Managing traffic & traffic calming;
 - Promoting alternative modes of transportation;
 - Improving transit services and facilities.
- Goal WMP 6-2: Create a pedestrian environment for Winslow.
- Policy WMP 6-2.1: Provide an extensive interconnected pedestrian system of sidewalks and trails in Winslow in accordance with the Winslow Master Plan and the Non-Motorized Transportation Plan.
- Policy WMP 6-2.2: Integrate pedestrian facilities and amenities into a multi-modal transportation and circulation system for Winslow.
- Policy WMP 6-2.3: The pedestrian circulation system should be designed to provide continuity.
- Policy WMP 6-2.4: Provide for wide sidewalks and other pedestrian amenities that support and encourage pedestrian use of Winslow.

- Policy WMP 6-2.5: Improve pedestrian connections by protecting and formalizing use paths.
- Policy WMP 6-2.8: High priority pedestrian corridors, as identified in the Non-Motorized Plan, shall be preserved through public easements and physical design. Additional pedestrian corridors should be provided as redevelopment and infill occurs and the City should strive to achieve a pedestrian network with intersections ultimately averaging from 250 feet to 330 feet apart throughout Winslow.
- Policy WMP 6-2.10: Maintain, provide and encourage pedestrian connections to Eagle Harbor, the Ravine, neighborhoods and the ferry terminal.

Exhibit 1.B, Revised Staff Report, pages 4 through 7.

7. City staff determined the proposal would be consistent with the goals and policies of the Comprehensive Plan and Winslow Master Plan, noting:
 - The Comprehensive Plan encourages residential use within this district. The development is within an area served by public facilities and services and is within walking distance to public amenities, including a park, library, and schools, as well as banks, grocery stores, restaurants, personal and professional services, and the ferry terminal.
 - The Island-wide Transportation Plan (IWTP) is adopted by reference in the Comprehensive Plan. The IWTP is a functional plan, technical rather than policy in nature, and provides the primary means for carrying out the policy direction of the Transportation Element. The subject property lies within a Trail Connection Zone. As proposed, the redevelopment provides common (private) vehicular access from Madrona Way via a non-exclusive ingress/egress easement agreement over the property to the south, and common (private) pedestrian access from Wyatt Way NE.
 - Preservation of the Islander Mobile Home Park as an existing park site for manufactured homes is encouraged through affordable housing bonus density provisions in the municipal code.
 - This redevelopment project provides growth where infrastructure exists, provides for growth that would otherwise be scattered in outlying areas, and provides redevelopment of an aging, existing property. The project provides affordable housing through preservation of the Islander Mobile Home Park. The project reduces reliance on automobiles due to proximity to surrounding commercial development; public transit, including buses and the ferry; and access to a public trail system, which connects to a local park, downtown, and the ferry terminal.

Exhibit 1.B, Revised Staff Project Report, page 7.

8. The property is zoned Mixed Use Town Center (MUTC) and is located within the Central Core Overlay District. The purpose of the MUTC zone is to “implement the Mixed Use

Town Center sections of the comprehensive plan,” and the MUTC zone “should strengthen the vitality of downtown Winslow as a place for people to live, shop and work, to provide a strong residential component, and to encourage a lively community during both the day and night.” *Bainbridge Island Municipal Code (BIMC) 18.06.030.A*. The MUTC zone “includes five overlay districts that allow diverse types of housing, shopping, civic facilities, recreation and employment. The mix of land uses promotes a pedestrian atmosphere, enhances the viability of the town center, and allows development in a manner that is harmonious with the scale of the town center.” *BIMC 18.06.030.A*. The Central Core Overlay District is “the most intense district within the [MUTC]. Within this overlay district, residential uses are encouraged, but exclusive office and/or retail uses are permitted.” *BIMC 18.06.030.A.1. Exhibit 1.B; Revised Staff Report, page 2*.

9. City staff reviewed the proposal and determined that it would comply with the applicable dimensional standards for the MUTC zone under BIMC Table 18.12.020-3, the development standards and guidelines under Chapter 18.15 BIMC, and the design guidelines under Chapter 18.18 BIMC, noting:
- The proposal would include a floor area ratio (FAR) of approximately 91.5 percent, exceeding the 40 percent base residential FAR for the Central Core Overlay of the MUTC zone under BIMC Table 18.12.020-3. The proposal would, however, comply with maximum floor area ratio (FAR) requirements through the bonus density provisions of BIMC 18.12.030.E.1.b, which allow for the transfer of unused FAR from the Islander Mobile Home Park to parcels within the MUTC zone.
 - The maximum lot coverage for the Central Core Overlay of the MUTC zone is 100 percent, excluding setbacks. The proposal would comply with all applicable setback requirements and would provide approximately 5,400 square feet of lot coverage on the 7,647 square foot parcel, in accord with this requirement.
 - The maximum building height within the area of the Central Core Overlay of the MUTC zone north of Parfitt Way is 35 feet, or 45 feet when a building includes under-building parking. The proposed height for buildings on Lots 3 through 5 would be 35 feet, and the proposed height for the buildings with under-building parking on Lots 1 and 2 would be 45 feet, in accord with these requirements.
 - Perimeter landscape buffer requirements do not apply to the proposal because the subject property measures less than one acre.
 - Roadside landscape buffer requirements do not apply to subdivisions in the MUTC zoning district.
 - The proposal would meet the total site tree unit requirements of BIMC 18.15.010.G by retaining two significant trees on-site that equate to a total of five tree units.
 - The proposal would be required to provide a total of five off-street parking spaces under BIMC 18.15.020-1 through the 50 percent off-street parking reduction

applicable to properties located within one-half mile of the ferry terminal. The Applicant would exceed this requirement by providing six off-street parking spaces.

- The City Development Engineer reviewed the proposed site plan and determined that, as conditioned, the proposal would comply with the City Design and Construction Standards and Specifications and would meet the mobility and access requirements of BIMC 18.15.030.

Exhibit 1.B, Revised Staff Report, pages 11 through 13; Exhibits 9 through 13.

10. BIMC 17.12.060 provides homesite clustering standards applicable to the proposed development, and BIMC 17.12.070 provides general residential subdivision standards applicable to the proposed development. City staff reviewed the proposal and determined that, with conditions, it would meet these standards, noting:
- The homesites would be separated by not more than 12 feet and would therefore meet the maximum 25-foot homesite separation standard.
 - A recommended condition would prohibit sight-obscuring fencing at the property's exterior boundary.
 - A perimeter landscape buffer is not required because the property is less than one acre.
 - Roadside landscape buffers are not required in the MUTC zoning district.
 - The proposal would comply with the City's Design and Construction Standards for frontage improvements and would be consistent with the Island-Wide Transportation Plan.
 - The subject property lies within a Trail Connection Zone. The City Development Engineer considered public pedestrian access through the subject property and determined that a public easement is not warranted.

Exhibit 1.B, Revised Staff Report, pages 8 through 10.

Existing Site, Critical Areas, and Surrounding Development

11. The approximately 0.18-acre property currently contains a single-family residence and garage that would be removed to accommodate the proposed development. The site slopes gently from the northeast to the southwest. There is a grade change along the north and south boundaries of the property, which are both less than 2 feet in height. The entire city is a designated Aquifer Recharge Protection Area. Residential uses are not identified as uses that have the potential to generate a pollutant identified as a potential source of drinking water contamination. *BIMC 16.20.100.B.3.b*. In addition, the City Development Engineer reviewed the proposal and determined that, with conditions, it would conform to the applicable drainage regulations under Chapters 15.20 and 15.21 BIMC. No other critical areas were identified on the property. The property is bound to the north by Wyatt Way NE, a public right-of-way. Properties to the north, across Wyatt Way NE, are within the Madison Avenue Overlay of the MUTC zoning district and are developed with multi-family residence uses. Properties to the east are within the Central

Core Overlay of the MUTC zone and are developed with single-family residences. Properties to the south are within the Central Core Overlay of the MUTC zone and are developed with multi-family residences. Properties to the west are within the Central Core Overlay of the MUTC zone and are developed with personal service commercial uses. *Exhibit 1.B, Revised Staff Report, pages 2, 8, and 17; Exhibits 9 through 14; Exhibit 24.*

Access, Traffic, and Parking

12. Vehicular access to the property is currently provided from Wyatt Way NE to the north. Access to the proposed development would be from Madrona Way NE to the south via an access easement through a parking lot on the adjacent property to the south. The property is located within a Trail Connection Zone, and City staff originally recommended a condition that would have required the creation of a pedestrian trail through the property to provide a mid-block connection between Madrona Way NE and Wyatt Way NE.

The Applicant requested that City staff reconsider this recommended condition, noting:

- The rationale for the connection is based in part on the mistaken belief that the Applicant's access easement across the adjoining property to the south would allow for public access. The existing access easement, however, is limited to providing access for vehicle and pedestrians to the subject property for residents of the project. There is no provision for general public access. Although the Applicant could provide such public access within the project site, it does not have the ability to grant public access across the adjacent property to the south.
- If the public was allowed access into the project site, it would in effect lead to a dead end and could encourage potential trespass onto the adjacent site to the south.

After the Hearing Examiner granted the Applicant's request for a continuance of the hearing to further analyze this issue, the City Development Engineer determined that a public trail through the property would not be warranted, and City staff withdrew its recommendation for this condition. *Exhibit 1.A, Staff Report, pages 1 through 3; Exhibit 1.B, Revised Staff Report, pages 2, 3, 9, 10, 13, and 16; Exhibit 9; Exhibit 11; Exhibit 12; Exhibit 15; Exhibit 20; Exhibits 29 through 32.*

13. The Applicant would provide frontage improvements along Wyatt Way NE that would include a public sidewalk, curb, and gutter. The City Development Engineer reviewed the proposal and determined that, with conditions, the streets and pedestrian ways would be adequate to accommodate anticipated traffic generated by the proposal. The City Development Engineer further determined that a traffic impact analysis would not be required for the proposed development based on projected trip generation methodologies found in the Institute of Transportation Engineers Trip Generation Manual. The Applicant would be required to pay transportation impact fees in accordance with

Chapter 15.30 BIMC at the time of building permit issuance. As noted above, the proposed development would exceed applicable off-street parking requirements by providing six on-site parking spaces. *Exhibit 1.A, Staff Report, pages 1 through 3; Exhibit 1.B, Revised Staff Report, pages 2, 3, 9, 10, 13, and 16; Exhibit 9; Exhibit 11; Exhibit 12; Exhibit 15; Exhibit 20; Exhibits 29 through 32.*

Trees, Open Spaces, and Landscaping

14. As noted above, the Applicant proposes to retain two significant fir trees on-site that total five tree credits, which would meet the total site tree unit requirements of BIMC 18.15.010.G. The Applicant would be required to provide a minimum of five percent of the total site area for natural areas. The Applicant would exceed this requirement by providing a 469 square foot natural area, which equates to 6.1 percent of the total lot area. *BIMC Table 17.12.070-1.* The natural area would contain the two retained significant trees, provide protection for groundwater recharge, and provide a scenic view from Wyatt Way NE. The Applicant would also be required to provide a minimum of 10 percent of the total site area for community space. The Applicant would exceed this requirement by providing a 1,017 square foot community space area containing common garden elements, which equates to 13.3 percent of the lot area. The natural area and community space would be established by easement, restrictive covenant, or similar legal means. No perimeter or roadside landscape buffers are required. *Exhibit 1.B, Revised Staff Report, pages 10 through 12, and 18; Exhibit 9; Exhibits 11 through 13.*

Stormwater

15. Browne Wheeler Engineers, Inc. prepared site plans for the Applicant, dated August 18, 2021, which address proposed stormwater management improvements for the site under the 2014 Washington State Department of Ecology Stormwater Management Manual for Western Washington. Based on field investigations, the permeable soil on the site is approximately one foot deep before reaching hard pan, and soils on-site do not meet the requirements for infiltration best management practices (BMPs). Runoff from the driveway would be routed to two small rain gardens designed to provide over 91 percent filtration of the modeled runoff that they receive. These rain gardens would then discharge to a drainage system that would route the runoff to a connection with the existing drainage system on the adjacent parcels to the west. Runoff from the north three buildings would be routed to Wyatt Way NE. This would reduce the runoff from the project to the Madrona Way system to below the level that currently occurs with the existing development. The contractor would be responsible for maintaining erosion control facilities on the site during construction and for ensuring that sediment does not leave the site. The City Development Engineer reviewed the preliminary stormwater site plan and utility report and determined that the proposed stormwater management design would comply with applicable drainage requirements of the municipal code. *Exhibit 1.B, Revised Staff Report, pages 16; Exhibit 8; Exhibit 11; Exhibit 14.*

Utilities and Services

16. The City Development Engineer determined that there is adequate capacity in the City’s water and sewer systems to serve the proposed development. On March 2, 2022, the City issued a letter serving as a binding limited commitment for water and sewer service, upon a 10 percent deposit being paid, or as an unlimited binding commitment, with payment in full, within 30 days of the date of the letter and all conditions being met. The Kitsap Public Health District would review and verify compliance with water and sewage disposal at the building permit stage. The City of Bainbridge Island Police Department would provide police services. *Exhibit 1.B, Revised Staff Report, pages 3 and 15; Exhibit 11; Exhibit 16; Exhibit 22.*

Schools and Parks

17. The Bainbridge Island School District would serve the proposed subdivision and did not provide any comments on the proposal. The City did not identify any specific neighboring schools but determined that the proposed development would be adequately served by public sidewalks and would be within walking distance to public amenities including a park, library, and schools. *Exhibit 1.B, Revised Staff Report, pages 7 and 17.*

Site Plan/Design Review

18. The proposed development is subject to site plan and design review approval because two of the townhome units would be attached. The purpose of the site plan and design review process is to ensure “compliance with the adopted plans, policies, and ordinances of the city.” *BIMC 2.16.040.* The overall goal of site plan and design review is to “minimize land alteration, provide greater site development flexibility and consequently provide more creative and imaginative design than generally is possible under conventional zoning regulations.” *BIMC 2.16.040.* The site plan and design review process is also intended to “provide for the review of development proposals with respect to overall site design and to provide a means for guiding development in a logical, safe, attractive, and expedient manner, while also allowing property to be developed in phases,” as well as to “promote those specific purposes for each zoning district stated in Chapter 18.06 BIMC.” *BIMC 2.16.040. Exhibit 1.B, Revised Staff Report, pages 1, and 14 through 17; Exhibit 20.*
19. The Applicant provided a project narrative addressing specific criteria for site plan and design review approval under BIMC 2.16.040.F, which asserts:
- The proposed project would be consistent with all applicable codes and guidelines.
 - The project has been designed to reflect recent development patterns in the neighborhood, enhances pedestrian movement, and is consistent with Design for Bainbridge.
 - The project has received approval from Kitsap Public Health District.

- The project has been reviewed and approved by engineering staff for traffic and non-motorized improvements.
- The project has been reviewed and approved by engineering staff for consistency with the City Development Engineer’s criteria review.
- No harmful conditions are known to be caused by the project.
- The project site does not contain any critical areas or buffers.
- The project site is not within the shoreline buffer. The Applicant is not requesting credit for open space dedication.
- The project would comply with all requirements of the Bainbridge Island Fire Department.
- The site plan and design have been prepared consistent with purpose and review procedures of Chapter 2.16 BIMC.

Exhibit 1.B, Revised Staff Report, pages 1, and 14 through 17; Exhibit 20.

20. A proposal requiring site plan and design review must be reviewed by the City’s Design Review Board (DRB), as well as by the City’s Planning Commission, to ensure the proposal complies with the City’s design review guidelines. *BIMC 2.16.040.E.* An Applicant may request that review of a site plan and design be consolidated with review of other land use permits, such as a preliminary subdivision. *BIMC 2.16.040.E.6.* The Applicant for this proposal requested consolidated review of the site plan and design review with the request for approval of a preliminary subdivision. Both the DRB and the Planning Commission reviewed the proposed development prior to the open record hearing before the Hearing Examiner. *Exhibit 1.B, Revised Staff Report, pages 13 and 14.*

Design Review Board Review

21. BIMC 2.16.040.D requires an Applicant to engage in conceptual, design guidance, and final design review meetings with the Design Review Board (DRB). The DRB reviewed the Applicant’s proposed site plan and design at meetings on July 19, 2021, and February 7, 2022. The Applicant submitted a Design for Bainbridge Worksheet, which was signed by the DRP Chair on February 8, 2022, with no recommended conditions. *Exhibit 21.*

Planning Commission Review

22. The City Planning Commission reviewed the proposal at its meeting on May 26, 2022. The Planning Commission unanimously voted to recommend approval of the project with the condition that “any privately owned natural or shared common space shall be established by easement, restrictive covenant or similar legal means per BIMC 17.12.050A 7 and B4, shared parking shall be protected through similar legal means. This condition may be altered as necessary to meet the intent.” Ms. Tayara clarified at the hearing that the City staff’s recommended condition for a pedestrian trail through the property, which has since been withdrawn, was not presented to the City Planning Commission during their review of the project and, therefore, was not included as part of

their recommendation. *Exhibit 1.B, Revised Staff Report, pages 4 and 18; Exhibit 25; Testimony of Ms. Tayara.*

City Director of Planning and Community Development Review

23. Under Chapter 2.16 BIMC, the Director shall review the application materials, the information provided by the Health District and City Engineer, any public comments received, the staff report, and the recommendations of the Design Review Board and Planning Commission and shall recommend to the Hearing Examiner approval, approval with conditions, or disapproval of the application. *BIMC 2.16.040.E.5 and 6; BIMC 2.16.125.E.5.* The Planning Commission's recommendation shall hold substantial weight in the consideration of the application, and any deviation from that recommendation shall be documented in the Director's report. The Director determined that the proposed project would satisfy the site plan and design review criteria of BIMC 2.16.040.F and the preliminary long subdivision criteria of BIMC 2.16.125.F and recommends approval of the project with conditions recommended by the Planning Commission, noting:

- As conditioned, the development would be consistent with all provisions of the municipal code.
- Site redevelopment was discussed during the three public meetings with the DRB. The DRB reviewed the project for compliance with the City's design standards, including a context analysis that incorporated building and structure locations, natural areas and community space, and landscaping, and recommended approval of the project as proposed. The buildings and access are designed to follow the natural site topography. The project is context-sensitive in design and compatible with the physical characteristics of the site.
- The project followed the required preapplication review process to ensure compliance with design standards. With conditions, the project would comply with subdivision and zoning standards, including dimensional standards, design standards, landscaping, and parking requirements.
- The preliminary subdivision was prepared consistent with the four-step design process in BIMC 17.12.030 to ensure the design would be compatible with the physical characteristics of the site, the applicable design standards in Design for Bainbridge, and the City's design review regulations.
- An appropriate management and maintenance plan for the natural areas and community space is listed on the plat.
- The project would rely on City water and sewer facilities. After reviewing the preliminary utility plan, the City Development Engineer determined that there is adequate capacity in the water and sewer system and that those services can be made available at the site as conditioned in the binding water/sewer limited commitment letter issued on November 15, 2021. The Kitsap Public Health District has no comment at this phase of the project and would verify compliance with water and sewage disposal requirements at the building permit stage of the project.

- Recommended conditions provide for public health, safety and welfare, and public use and interest. These include conditions to provide adequately for transportation and access, including pedestrian and emergency services access, water, sanitation, stormwater facilities, and fugitive dust.
- The City Development Engineer determined that, as modified by recommended conditions, the streets and pedestrian ways would be adequate to accommodate anticipated traffic.
- City staff identified applicable Comprehensive Plan and Winslow Master Plan goals and policies. The project is consistent with the Comprehensive Plan and other applicable adopted community plans.
- The City of Bainbridge Island is a designated Aquifer Recharge Protection Area. The City Development Engineer determined that residential use is not identified as a use that has the potential to generate a pollutant identified as a potential source of drinking water contamination. The project conforms to critical area regulations.
- The Fire Marshal recommends approval subject to the conditions.
- The application process has been conducted in accordance with the site plan and design review, preliminary subdivision, and consolidated project review provisions of BIMC 2.16.040.E, BIMC 2.16.125.E, and BIMC 2.16.170, respectively.

Exhibit 1.B, Revised Staff Report, pages 14 through 17.

Testimony

June 30, 2022, Hearing

24. At the outset of the hearing scheduled for June 30, 2022, the Hearing Examiner addressed a June 29, 2022, request by the Applicant to postpone the hearing to allow the Applicant time to address a recommended condition that would require the installation of a public trail through the subject property. Attorney Bruce Weiland, on behalf of the Applicant, requested that the Hearing Examiner continue the hearing for one month to allow the Applicant time to review and address the recommended public trail condition, noting that the Applicant only recently became aware that City staff was proposing a public trail as a condition of approval. City Senior Planner Kelly Tayara stated that the City would not oppose the request provided that the Applicant would agree to pay for any costs associated with providing additional notice for a continued hearing. Attorney Weiland agreed that the Applicant would bear these costs, if any, and, after confirming the availability of Ms. Tayara and City Development Engineering Manager Paul Nylund, the Hearing Examiner ultimately continued the hearing to August 1, 2022. *Statements of Attorney Weiland; Statements of Ms. Tayara; Statements of Mr. Nylund; Oral Ruling of Hearing Examiner.*

Continued August 1, 2022, Hearing

25. City Senior Planner Kelly Tayara testified generally about the application review process

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and about how, with conditions, the proposal would meet the requirements for a preliminary plat and for site plan and design review approval. She provided a description of the subject property, the surrounding area, and the proposed development, consistent with the findings above. Ms. Tayara stressed that the revised staff report prepared for the Hearing Examiner's review of the proposal incorporates review comments and recommendations of the City Planning Commission, the City Development Engineering Manager, the Fire Marshal, and the City Director of Planning and Community Development. She stated that the Director recommends approval of the proposed development, subject to the conditions recommended by the Planning Commission, which incorporated recommendations provided by City staff and the Fire Marshal. Ms. Tayara explained that, following the Hearing Examiner's grant of a continuance to allow for the public trail issue to be further addressed, City staff met with the Applicant and determined that the access easement across the adjacent property to the south does not allow for general public access and, therefore, a public trail through the subject property would effectively result in a dead end and could encourage trespass on the adjacent property. She stated that, in light of this, City staff has withdrawn the recommendation to include a condition requiring a public access trail through the property. Ms. Tayara noted that the Applicant has already purchased the unused FAR credits from the Islander Mobile Home Park required to allow for the proposed density of the project. *Testimony of Ms. Tayara.*

26. City Development Engineering Manager Paul Nylund testified about his review of the Applicant's preliminary stormwater management plan, noting that he deemed the plan acceptable at this stage. He stressed that the Applicant's final stormwater plan would be reviewed for compliance with all applicable stormwater management regulations at later permitting stages. Mr. Nylund explained that the City recently adopted the latest 2019 Washington State Department of Ecology Stormwater Management Manual for Western Washington and noted that the project would be reviewed for compliance with this latest version of the manual. He noted that City staff has withdrawn the recommended condition that would have required a public trail through the subject property for various reasons, including public safety issues that could arise from pedestrians utilizing the parking lot to the south as a pathway to Madrona Way NE, even if allowed under the access easement. *Testimony of Mr. Nylund.*
27. Applicant Representative Charles Wenzlau appeared at the hearing and introduced the Applicant but did not provide any substantive comments on the proposed development. *Testimony of Mr. Wenzlau.*
28. Applicant Kelly Samson expressed some frustration about the late inclusion of a recommended condition that would have required a public access trail through the property but stated that he appreciates City staff's efforts in reviewing the proposal and ultimately withdrawing the recommended condition. He noted that, through no fault of

the Applicant team, a decision on the preliminary plat request would not be issued within the 90-day time period typically associated with the processing of such applications. Ms. Tayara explained that the City provided written notice of an extended timeline to issue a decision in accordance with municipal code requirements. *Testimony of Mr. Samson; Testimony of Ms. Tayara.*

29. Project Civil Engineer Adam Wheeler testified that stormwater runoff from the site would likely be discharged to the City’s existing stormwater system within both Wyatt Way NE and Madrona Way NE, which he stated would help mitigate for the limited capacity associated the City’s stormwater system within Madrona Way NE to Madison Avenue N. He noted that the Applicant had sought to revise the proposed sanitary sewer extensions that would serve the townhomes buildings by constructing a sewer line to the south but that the adjacent property owner to the south would not agree to granting the Applicant an easement for this purpose. Mr. Wheeler explained that the Applicant would therefore proceed with the utility plan as originally proposed and preliminarily approved by the City. Mr. Nylund testified that City staff’s recommended conditions would allow the Applicant to revise the utility plan to provide a sewer extension to the south should the adjacent property-owner agree to provide the Applicant with a utility easement. *Testimony of Mr. Wheeler; Testimony of Mr. Nylund.*

Staff Recommendation

30. Ms. Tayara testified that the City Director of Planning and Community Development recommends approval of the request for a preliminary plat, and for site plan and design review approval, with conditions recommended by the City Planning Commission. *Exhibit 1.B, Revised Staff Report, pages 1, 19, and 20. Testimony of Ms. Tayara.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and approve, approve with conditions, or deny applications for preliminary subdivisions. *BIMC 2.14.030; BIMC Table 2.16.010-1; BIMC 2.16.020.A; BIMC 2.16.020.A.2; BIMC 2.16.125.* The Hearing Examiner is also granted jurisdiction to hear and approve, approve with conditions, or deny applications for a site plan and design review permit through a consolidated review process under BIMC 2.16.040 and BIMC 2.16.170.

Criteria for Review

Preliminary Plat

The Hearing Examiner’s decision shall include written findings of fact that the application meets all the requirements of the following subsections. A preliminary long subdivision may be approved or approved with modification if:

1. The applicable subdivision design guidelines and development standards of BIMC Titles 17 and 18 are satisfied; and

2. The preliminary long subdivision makes appropriate provisions for the public health, safety and general and public use and interest, including those items listed in RCW 58.17.110; and
3. The preliminary long subdivision has been prepared consistent with the requirements of the four-step design process; and
4. Any portion of a long subdivision that contains a critical area, as defined in Chapter 16.20 BIMC, conforms to all requirements of that chapter; and
5. Any portion of a long subdivision within shoreline jurisdiction, as defined in Chapter 16.12 BIMC, conforms to all requirements of that chapter; and
6. The city engineer's recommendation contains determinations that the following decision criteria are met and such determinations are supported by substantial evidence within the record:
 - a. The long subdivision meets the requirements of Chapter 17.12 BIMC related to streets and pedestrian access, and water, stormwater, and septic facilities; and
 - b. The long subdivision conforms to regulations concerning drainage in Chapters 15.19, 15.20 and 15.21 BIMC; and
 - c. The long subdivision will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use and enjoyment of properties downstream; and
 - d. If the long subdivision will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the long subdivision, and the applicable service(s) can be made available at the site; and
7. The proposal complies with all applicable provisions of this code; Chapters 36.70A and 58.17 RCW; and all other applicable provisions of state and federal laws and regulations; and
8. The proposal is consistent with the city's comprehensive plan; and
9. Appropriate provisions for maintenance in perpetuity of natural and/or community space have been made; and
10. The preliminary subdivision design is compatible with the physical characteristics of the proposed subdivision site.

BIMC 2.16.125.F.

The state subdivision criteria, codified at Chapter 58.17 RCW, are as follows:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislature body makes written findings that: (a) appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only

walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110(2).

Site Plan and Design Review

The stated purpose of the City's site plan and design review code provisions is:

to establish a comprehensive site plan and design review process that ensures compliance with the adopted plans, policies, and ordinances of the city. The overall goal of this chapter is to minimize land alteration, provide greater site development flexibility and consequently provide more creative and imaginative design than generally is possible under conventional zoning regulations. It is further intended to provide for the review of development proposals with respect to overall site design and to provide a means for guiding development in a logical, safe, attractive, and expedient manner, while also allowing property to be developed in phases. An additional purpose is to promote those specific purposes for each zoning district stated in Chapter 18.06 BIMC.

BIMC 2.16.040.A.

The following criteria apply to recommendations or decisions on site plan and design review applications:

1. The site plan and design is consistent with all applicable provisions of the BIMC, design guidelines, the comprehensive plan, and applicable subarea and master plans; and
2. The locations of the buildings and structures, open spaces, and landscaping result in a context-sensitive design; and
3. The Kitsap public health district has determined that the site plan and design meets the following decision criteria:
 - a. The proposal conforms to current standards regarding domestic water supply and sewage disposal; or if the proposal is not to be served by public sewers, then the lot has sufficient area and soil, topographic and drainage characteristics to permit an on-site sewage disposal system; and
 - b. If the health district recommends approval of the application with respect to those items in subsection F.3.a of this section, the health district shall so advise the director; and
 - c. If the health district recommends disapproval of the application, it shall provide a written explanation to the director; and
4. The streets and nonmotorized facilities, as proposed, are adequate to accommodate anticipated traffic; and
5. The city engineer has determined that the site plan and design meets the following decision criteria:

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- a. The site plan and design conforms to regulations concerning drainage in Chapters 15.20 and 15.21 BIMC; and
 - b. The site plan and design will not cause an undue burden on the drainage basin or water quality and will not unreasonably interfere with the use of properties downstream; and
 - c. The streets, nonmotorized facilities, locations of the buildings, structures, and vehicular circulation systems as proposed align with and are otherwise coordinated with streets and nonmotorized facilities serving adjacent properties and are adequate, safe, efficient and consistent with the island-wide transportation plan; and
 - d. If a traffic study shows that the proposed development will have an adverse impact on traffic, including nonmotorized traffic, the impact shall be mitigated as required by the city engineer; and
 - e. If the site will rely on public water or sewer services, there is capacity in the water or sewer system (as applicable) to serve the site, and the required service(s) can be made available at the site; and
 - f. The site plan and design conforms to the “City of Bainbridge Island Engineering Design and Construction Standards and Specifications,” unless the city engineer has approved a deviation from the standards; and
6. No harmful or unhealthful conditions are likely to result from the proposed site plan; and
 7. If the subject property contains a critical area or buffer, as defined in Chapter 16.20 BIMC, the site plan and design review permit conforms to all requirements of that chapter; and
 8. If the subject property is within the shoreline jurisdiction, as defined in Chapter 16.12 BIMC, the site plan and design review permit conforms to all requirements of that chapter; and
 9. If the Applicant is providing privately owned open space and is requesting credit against dedications for park and recreation facilities required by BIMC 17.20.020.C, the requirements of BIMC 17.20.020.D have been met; and
 10. The Bainbridge Island fire department has reviewed the application and determined that the site plan has been properly designed to ensure fire protection; and
 11. The site plan and design has been prepared consistent with the purpose and review procedures of this chapter.

BIMC 2.16.040.F.

The director may approve, approve with conditions, or disapprove the application for site plan and design review. Conditions may be imposed to enable the proposal to meet the standards of the decision criteria.

BIMC 2.16.040.G.

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The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

Preliminary Subdivision

- 1. With conditions, the proposed preliminary plat would satisfy the requirements for a land division under BIMC 2.16.125.F and RCW 58.17.110(2).** The City provided reasonable notice and opportunity to comment on the proposal. The City received comments on the proposal from two members of the public in response to its notice materials. Winston Albert raised concerns about increased density from the proposed development and other development projects in the area altering the existing character of the neighborhood and creating traffic, parking, and noise impacts. Traffic impacts were assessed by the City through review of the Applicant's submitted materials and the Applicant would be required to pay traffic impact fees associated with the development; City staff analyzed the Comprehensive Plan and determined the proposal would not impact neighborhood compatibility. Becca Hanson, on behalf of the homeowner's association for adjacent property to the south, raised concerns about a public trail being located through a parking lot on the adjacent property. Following the Hearing Examiner's grant of a continuance to allow the parties time to resolve the public trail issue, City staff ultimately determined that a public trail would not be allowed on the adjacent property under an existing access easement and, therefore, a public trail through the subject property would not be warranted. Accordingly, City staff withdrew its recommendation to condition the proposal on the construction of a public trail through the subject property.

The subject property is located within the Central Core Overlay of the MUTC zoning district. The proposed development would comply with the maximum floor area ratio (FAR) requirements for this zoning and overlay classification though bonus density provisions of the municipal code allowing for the transfer of unused FAR from the Islander Mobile Home Park to parcels within the MUTC zone. The proposed development would include six off-street parking spaces, exceeding the five off-street parking spaces required for the development through the 50 percent off-street parking reduction applicable to properties within one-half mile of the ferry terminal. The Applicant would provide frontage improvements along Wyatt Way NE that would include a public sidewalk, curb, and gutter. The City Development Engineer reviewed the proposal and determined that, with conditions, the streets and pedestrian ways would be adequate to accommodate anticipated traffic generated by the proposal. The City Development Engineer also determined that a full traffic impact analysis would not be

required for the proposal based on the anticipated traffic that would be generated from the development.

The property is designated Mixed Use Town Center - CORE Overlay District under the City Comprehensive Plan. The proposed development would be consistent with several goals and policies of the Comprehensive Plan and the Winslow Master Plan by providing dense townhome residential development on underutilized property within the downtown Winslow area consistent with applicable design standards, while utilizing FAR transfer provisions of the municipal code that are designed to preserve affordable housing options within the Islander Mobile Home Park.

The City analyzed the environmental impacts of the proposal, determined that it would not have a probable significant impact on the environment, and issued a DNS, which was not appealed. The property is located within a designated Aquifer Recharge Protection Area, but residential uses are not identified as uses that have the potential to generate a pollutant identified as a potential source of drinking water contamination. No other critical areas were identified on the property. The property is not located within the shoreline jurisdiction.

The proposed preliminary plat has been prepared consistent with the requirements of a four-step design process. City staff reviewed the proposal and determined that it would comply with all applicable subdivision design guidelines and development standards under Title 17 BIMC and Title 18 BIMC, including guidelines and standards related to homesite spacing, sight-obscuring fencing, perimeter and roadside landscape buffering, street and vehicle access, natural areas and community space, maximum FAR, minimum setbacks, tree retention, lot coverage, building heights, and off-street parking.

Access to the property would be provided from Madrona Way NE via an access easement through a parking lot on the adjacent property to the south. The City Development Engineer reviewed the proposal and determined that, with conditions, it would meet applicable requirements for streets and pedestrian ways and would conform to City design and construction standards and specifications. The Applicant proposes to manage stormwater on-site by routing runoff from the driveway to two rain gardens to provide water quality treatment before discharging to a drainage system that would route the runoff to a connection with the existing drainage system on the adjacent parcels to the west. Runoff from the north three buildings would be routed to Wyatt Way NE. The City Development Engineer reviewed the preliminary stormwater site plan and determined that the proposed stormwater management design would comply with applicable drainage requirements of the municipal code. The Applicant's final stormwater plan would be reviewed at later permitting stages to ensure compliance with applicable drainage requirements, including requirements of the 2019 Washington State Department of Ecology Stormwater Management Manual for Western Washington.

The proposed subdivision would be served by City water and sanitary sewer. The City issued a water and sewer commitment letter on March 2, 2002. The Kitsap Public Health District did not raise any concerns about the proposed development, and it would review and verify compliance with water and sewage disposal requirements at the building permit stage. The Fire Marshal recommended approval of the proposal subject to four conditions, which have been incorporated into the conditions imposed in this decision. Students residing within the subdivision would be served by the Bainbridge Island School District. The School District did not provide any comments on the proposed development, and City staff determined that the development would be adequately served by public sidewalks.

As detailed below, the proposed development has been reviewed and determined by the City Design Review Board, Planning Commission, and Director of Planning and Community Development and determined to meet applicable design standards and guidelines with appropriate conditions. The project's compliance with applicable design standards and guidelines ensure that it would be compatible with the physical characteristics of the site. The Hearing Examiner determines that, as proposed and conditioned herein, the proposed subdivision would make appropriate provisions for the public health, safety, and general welfare and that the platting of the subdivision would be in the public interest. Conditions, as detailed below, are necessary to ensure that the proposal meets all applicable local and state requirements for the subdivision of land.

Findings 1 – 30.

Site Plan and Design Review

2. **With conditions, the proposed development would comply with the criteria for site plan and design review approval.** The Design Review Board (DRB) reviewed and approved the Applicant's proposed site plan and design on February 8, 2022. The Planning Commission also reviewed and approved the Applicant's site plan and design on May 26, 2022, with City staff's recommended conditions and an additional condition that any privately owned natural or shared common space shall be established by easement, restrictive covenant or similar legal means and that shared parking shall be protected through similar legal means. These conditions have been incorporated into the conditions imposed in this decision. The Applicant's site plan and design, as conditioned, complies with applicable code provisions and development standards for the Central Core Overlay of the MUTC zone, including dimensional standards, design standards, landscaping, and parking requirements. The DRB, Planning Commission, and Director of Planning and Community Development determined that proposed buildings and access were designed to follow the natural site topography, which would be compatible with the physical characteristics of the site. The Kitsap Public Health District did not raise any concerns about the proposed development and would verify compliance with water and sewage disposal at the building permit stage. The City Development

Engineer determined that, as conditioned, the proposed development would comply with applicable stormwater regulations, would not cause an undue burden on the drainage basin or water quality, would not unreasonably interfere with the use of downstream properties, would not have an unreasonable adverse impact on traffic, would be adequately served by streets and sidewalks, would be adequately served by City water and sanitary sewer, and would conform with applicable design and construction standards and specifications. No harmful or unhealthful conditions have been identified as likely to result from the proposed site plan. The Bainbridge Island Fire Department reviewed the application and determined that, with conditions, the site plan has been properly designed to ensure fire protection. The site plan and design has been prepared consistent with the purpose and review procedures of Chapter 2.16.040 BIMC. Conditions, as detailed below, are necessary to ensure that the proposal meets the requirements for site plan and design review approval. *Findings 1, 18 – 30.*

DECISION

Based on the preceding findings and conclusions, the request for a preliminary plat, and for site plan and design review approval, to divide an approximately 0.18-acre parcel into five lots for five townhome units within four buildings at 167 Wyatt Way NE, are **APPROVED**, with the following conditions:²

1. The authorization for construction activities automatically expires and is void if the Applicant fails to file for construction permit or other necessary development permit within three years of the effective date of this Site Plan and Design Review permit.
2. Plans submitted for construction shall substantially comply with the plans approved through this land use permit.
3. Prior to any construction, the Applicant shall obtain the appropriate permits from the City of Bainbridge Island, including but not limited to clearing, grading, and/or building permits.
4. If any historical or archaeological artifacts are uncovered during excavation or construction, work shall immediately stop and the Department of Planning and Community Development and the Washington State Office of Archaeology and Historic Preservation shall be immediately notified. Construction shall only continue thereafter in compliance with the applicable provisions of law.
5. Sight-obscuring fencing is prohibited at the subdivision exterior boundary.

² Conditions include both legal requirements applicable to all developments and requirements necessary to mitigate the specific impacts of this development.

6. Any privately owned Natural Area / Community Space or shared common space shall be established by easement, restrictive covenant or similar legal means per BIMC 17.12.050.A.7 and BIMC 17.12.050.B.4. Shared parking shall be protected through similar legal means. This condition may be altered by the Director or Hearing Examiner as necessary to meet the intent.
7. Floor Area Ratio bonus density shall comply with the bonus density provisions of BIMC 18.12.030.E.
8. The project shall comply with the following conditions to the satisfaction of the Fire Marshal:
 - A. Any future development shall comply with all applicable provisions of the adopted Fire Code.
 - B. Fire apparatus access roads shall not be less than 20 feet wide drivable surface with 13.5 feet overhead clearance. Dead ends greater than 150 feet require approved turnarounds. Grade of access road shall be in accordance with the Public Works Street Standard.
 - C. Fire flow of 500 gpm for 30 minutes from a hydrant within 1000 feet as measured along an approved access roadway from the structure is required for future development.
 - D. A fully automatic fire sprinkler system design, installed and tested pursuant to the current adopted edition of NFPA 13, NFPA 13R, or NFPA 13D, as determined by the Fire Marshal, shall be installed in all new buildings in excess of 3,600 square feet total floor area.
9. All activities shall comply with Puget Sound Clean Air Agency (PSCAA) regulations.
10. Prior to any site activity, the Applicant shall submit to the City for approval a dust control plan which is in conformance with PSCAA regulations Article 9 Emission Standards Regulation I-9 and Department of Ecology guidelines Dust Control Methods Publication 96-433.
11. The project shall comply with the following conditions to the satisfaction of the City Engineer:
 - A. Every lot corner shall be staked by a three-quarter-inch galvanized iron pipe or equivalent approved by the City, driven into the ground and marked or tagged with the certificate number of the surveyor setting said monument. The position and type of every permanent monument shall be noted on the plat. Perimeter and public street monuments (if required) shall be twenty-four inches long, set in concrete, or shall be constructed of an equivalent approved by the City.

- B. Civil improvement plans, reports, and computations prepared by a civil engineer registered in the State of Washington shall be submitted with the application to the City for a plat utility review and any associated commercial grade / fill, building, or right-of-way (ROW) use permits. Plans and reports required to construct all necessary infrastructure to serve the divided lots will be reviewed and approved by the City Engineer prior to issuance of any construction permit. Infrastructure to be reviewed includes but is not limited to, final site drainage, construction erosion control, grading, parking, signage, frontage improvements, vehicular / pedestrian access, and final City utility connections.
- C. On-site water and sanitary sewer main extensions necessary to serve the resultant lots of the long subdivision shall be publicly owned and maintained. Water and sanitary sewer main extensions shall be in 15-foot-wide easements and shall be accessible by maintenance vehicles to the satisfaction of the City Engineer.
- D. Pursuant to Washington Administrative Code 173-240-104 WAC, ownership and responsibility for operation and maintenance of domestic sewage facilities (pumped sewer systems) must be by a public entity.
- E. Pumped sewer systems (individual grinder pump stations) shall only be approved where gravity systems are not technically or economically feasible and shall require COBI approval of a design prepared by a licensed Civil Engineer using City-approved components. Required pumped sewer systems must be located within an easement granted to the City with adequate maintenance access (typically 15 feet wide or as approved by the Development Engineer).
- F. The existing private easement granted to the property to the east (4110-000-006-0003, 201 Wyatt Way NE) shall be revised to reflect the proposed rerouting of the private sanitary sewer line.
- G. Applicant shall provide documentation of permission for any construction proposed outside of the Applicant-owned property lines or easements for which Applicant is a beneficiary (i.e. sanitary sewer line to the east, storm work proposed outside of easement to the west).
- H. The final utility report/plans shall reflect any conditions on utility service imposed under the non-binding Water / Sewer Availability commitment letter issued March 2, 2022 (City File No. PW22 0006).

- I. The final stormwater site plan design and supporting drainage report submitted with construction permitting documents shall demonstrate project compliance with all applicable minimum requirements (1-9) as required by BIMC 15.20. An off-site analysis to assess the potential impacts to the downstream stormwater conveyance system regarding issues with capacity, erosion, water quality threats, localized flooding, etc. is required consistent with BIMC 15.20.060(H). Additional offsite improvements to the storm conveyance may be required.
- J. Frontage improvements (sidewalk/curb/gutter) shall be required along Wyatt Way NE as shown in the preliminary civil utility plans. Improvements to be designed and constructed in accordance with City of Bainbridge Island Design and Construction Standards and Specifications for a street classified as an urban collector unless deviations are approved by the COBI Development Engineer. These frontage improvements shall conform to Americans with Disability Act (ADA) requirements where applicable.
- K. Site Plan indicates that less than one acre of land will be disturbed during construction. No coverage under the Construction General Stormwater Permit (CGSP) from Department of Ecology is required for the duration of the project.
- L. The Construction Stormwater Pollution Prevention Plan (SWPPP) is required prior to construction activities resulting from the plat utility review approval, including clearing, grading, or civil improvements.
- M. The primary walkways throughout the development shall meet accessibility requirements as required and be surfaced with nonskid hard surfaces, providing a minimum of five feet of unobstructed width.
- N. The face of the plat shall indicate that all on-site stormwater facilities serving the resultant lots shall remain privately owned and operated/maintained. The owner shall be responsible for maintenance of the stormwater facilities following construction per BIMC 15.21 to include annual inspection and maintenance reports provided to the COBI Stormwater Management Program Coordinator.
- O. A Declaration of Covenant for Maintenance and Operation of Storm Drainage facilities shall be recorded prior to issuance of any certificate of occupancy unless waived by the Development Engineer. Required text for the Declaration of Covenant is found in BIMC 15.21, Exhibit A.

- P. Resultant lots will be subject to Transportation Impact Fees (TIF) per BIMC 15.30 and in accordance with the TIF Rate Schedule (or the optional independent calculation method) in effect at the time of permit issuance. TIFs shall be due in full at the time of building permit issuance.
- Q. An ROW construction use permit is required prior to construction activities within COBI ROW. The ROW use permit will be subject to separate conditions, fees, and bonding requirements.
- R. Installation of improvements and creation of as-built engineered plans must be completed prior to approval of final plat. In lieu of completion of those improvements and as-builts consistent with the conditions of a preliminary long subdivision approval, the City Engineer may accept an assurance device, in an amount and in a form determined by the City, but not to exceed 125 percent of the established cost of completing the infrastructure that secures and provides for the actual construction and installation of the improvements or the performance of the conditions within one year, or such additional time as the City Engineer determines is appropriate, after final subdivision approval.

DECIDED this 17th day of August 2022.



Andrew M. Reeves
Hearing Examiner
Sound Law Center